

5 Law vol. 16.
GENUINE COPIES

OF ALL THE

LETTERS

Which passed between the Right Honourable

THE LORD CHANCELLOR,

AND THE

SHERIFFS OF LONDON AND MIDDLESEX,

AND BETWEEN THE

SHERIFFS AND THE SECRETARY OF STATE,

RELATIVE TO THE

EXECUTION OF DOYLE AND VALINE.

*In rebus novis constituendis,
Aut urgens Necessitas aut evidens Utilitas:*

We feel not the one, we see not the other.

Sir F. BACON's Quotation and Comment.

L O N D O N:

PRINTED FOR R. DAVIS, IN PICCADILLY.

MDCCLXX.



ADVERTISEMENT.

THE editor of these letters purposes in *due* time to explain to the public all the late extraordinary transactions in Spitalfields: to lay before them what sort of disturbances have really happened for some years past in that neighbourhood; together with their causes; the conduct of administration, of the military, of the Sheriffs, of the justices of the peace, of the manufacturers, and of the journey-men weavers: with remarks on the act of parliament 6 Geo. III. on the prosecution and trials of the unhappy sufferers, and on the applications which were made for mercy.

The reasons which still subsist in some measure for the delay of the above publication, do not operate on the following letters: the question which is the subject of them being absolutely independent of, and unconnected with all other circumstances.

ADVERTISING

THE following is a list of the names of the persons who have been admitted to the membership of the Association since the last meeting. The names are arranged in alphabetical order. The names of the persons who have been admitted to the membership of the Association since the last meeting are as follows: [The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a list of names and possibly dates or other details related to the membership of an association.]

GENUINE COPIES

OF ALL THE

LETTERS, &c.

ON Saturday the twenty-first day of October, 1769, the Recorder of London passed sentence at the Old-Bailey on several capital convicts (amongst whom were John Doyle and John Valline) in the following words:

“ You, the several prisoners at the bar, shall be
“ taken hence to the place from whence you came,
“ and from thence to the usual place of execution;
“ where you are to be severally hanged by the neck
“ till you are dead, and may God Almighty be
“ merciful to your souls.”

On Thursday the ninth of November the Sheriffs received the following copy of a warrant from the Recorder for the execution of John Doyle and John Valline:

B

Lon-

London } To the Sheriffs of the city of London,
 and } and to the Sheriff of the county of
 Middlesex } Middlesex, and to the Keeper of his
 Majesty's gaol of Newgate.

WHEREAS at the session of gaol delivery of Newgate for the city of London and county of Middlesex, holden at Justice-Hall in the Old-Bailey on Wednesday the eighteenth day of October last, John Doyle and John Valline received sentence of death for their offence in the indictment against them mentioned: And WHEREAS it hath been duly signified to me that it is his Majesty's pleasure that the said sentence be executed in the most convenient place near Bethnal-Green Church, in the county of Middlesex. Now it is hereby ORDERED, that the execution of the said sentence be made and done upon them the said John Doyle and John Valline, on Wednesday the fifteenth day of this instant month of November, at the most convenient place near Bethnal-Green Church, in the said county of Middlesex.

GIVEN under my hand and seal this ninth day
 of November, 1769.



JAMES EYRE, Recorder.

The Sheriffs were much startled at this variation from the sentence which Mr. Recorder had pronounced in court: they therefore laid their doubts before counsel; and, in consequence of that opinion, which the reader will find hereafter*, wrote the following letter to Lord Weymouth, one of his Majesty's principal secretaries of state:

* See Mr. Serjeant Glynn's opinion, page 21.

My

My Lord,

THE inclosed will inform your lordship of the difficulty we are under respecting the execution of Doyle and Valline, two convicts now under sentence of death in Newgate. We propose to wait on his Majesty to-morrow morning to deliver a like paper into his own hands, of which we think it proper previously to transmit you this copy, that his Majesty may be apprized of it.

We are, my Lord,

Your Lordship's most obedient servants,

JAMES TOWNSEND.
JOHN SAWBRIDGE.

London,
Nov. 13, 1769.

(Inclosed Copy.)

To the King's most excellent Majesty.

Most Gracious Sovereign,

THE Recorder of London having signified to us, the Sheriff of the county of Middlesex, that it is your Majesty's pleasure that the two convicts, John Doyle and John Valline, now under sentence of death in Newgate, who at the last sessions of gaol delivery, holden for the city of London and county of Middlesex, were sentenced to be hanged at the usual place of execution, should, notwithstanding, be executed in the most convenient place near Bethnal-Green Church; we humbly conceive it our duty to lay before your Majesty our doubts,

B 2

whether

whether we can lawfully comply with this your Majesty's pleasure, to which, upon all occasions, it is our most earnest wish to be able to conform.

On the most mature deliberation and inquiry which the time has permitted, we are advised that the sentence pronounced by the court is our warrant for execution, to which we must look; and that we shall not be justifiable in departing from it.

We therefore humbly pray that your Majesty will be graciously pleased to respite the said execution, that the same may be re-considered; and to give us such farther directions as may SATISFY our doubts.

JAMES TOWNSEND.
JOHN SAWBRIDGE.

Lord Weymouth's answer.

Arlington-street, Nov. 13, 1769.

Gentlemen,

I Have received your letter of this day's date, which was left at my office by Mr. Reynolds at near eleven o'clock this night, inclosing a paper to which you refer me for the difficulty you are under respecting the execution of Doyle and Valline, and acquainting me that you propose to wait on his Majesty to-morrow morning, to deliver a like paper into his own hands, of which you think it proper previously to transmit me a copy, that his Majesty may be apprized of it. I beg leave to inform you that your intended mode of application to the King is irregular*. I am ready to receive and lay before

* The Secretary is mistaken. Both the King and the Parliament are accessible by right to the Sheriffs of London. If they prudently waved the point it was not because they were ignorant or regardless of the rights of the citizens.

his

his Majesty, in a proper manner, any doubts which you may entertain with regard to the discharge of your duty on this occasion, and shall not fail to signify to you his Majesty's further commands thereupon.

I am, Gentlemen,

Your humble servant,

WEYMOUTH.

The next morning, Tuesday November 14, the Sheriffs waited on Lord Weymouth, and delivered into his hands a petition to be by him presented to his Majesty, of which see the copy before given.

On Tuesday night, November 14, the Sheriffs received the following letter from Lord Weymouth:

Gentlemen,

St. James's, Nov. 14, 1769.

I Did not fail to lay before the King the paper which you transmitted to me last night, copy of which you put into my hands this morning, relative to the difficulties you are under respecting the execution of Doyle and Valline, and his Majesty has been graciously pleased to respite the execution for a week.—As upon the most mature deliberation and inquiry which the time has permitted, you are advised that the sentence pronounced by the court is your warrant for execution to which you must look, and that you shall not be justifiable in departing from it, I am commanded to signify to you his Majesty's pleasure that you transmit to me, for his Majesty's information, the opinion or opinions which you have taken on this occasion, that his

his Majesty may be the better enabled to give you such further directions as may SATISFY your doubts, according to your request.

I am, Gentlemen,

Your most obedient servant,

WEYMOUTH.

Respite for one week.

To the Recorder, &c.

Sir,

St. James's, Nov. 14, 1769.

I Am commanded to signify to you his Majesty's pleasure that the execution of the sentence of death passed upon John Doyle and John Valline, at the last session held at the Old-Bailey, be respited for one week from the time appointed for their execution.

I am, Sir,

Your most obedient humble Servant,

WEYMOUTH.

To James Eyre, Esq; Recorder of the city of London; the Sheriffs of the said city and county of Middlesex; and to the Keeper of Newgate, and all others whom it may concern.

Letter

Letter from the Sheriffs to Lord Weymouth.

My Lord,

WE desire your Lordship to express our thankful acknowledgment of his Majesty's great goodness in graciously condescending to our request, and permitting us to lay before his Majesty the reasons which induced us to doubt of the legality of the Recorder's directions relative to the execution of Doyle and Valline.

* And first, my Lord, we suppose it is agreed by all that the judgment pronounced is our warrant for execution, to which we must look: every execution which is not pursuant to the judgment is unwarrantable: the Sheriff is to pursue the sentence of the court: if he varies from the judgment it has been held murder: and the judgment pronounced on Doyle and Valline is, that they be carried to the usual place of execution.

2. The King cannot by his prerogative vary the execution, so as to aggravate the punishment beyond the intention of the law†: and the ends of

* The reader will find on examination that the first objection, and great part of the second, are taken almost literally from Coke, Hale, and Foster.

† If I am not very much mistaken, there is no prerogative whatever in the crown, except that of *mercy*, with regard to the sentence of the law; nor can it in any manner interfere therewith, but for the purpose of *mitigation*. Ministers for their own particular reasons may wish to exert a power of *aggravation*; but a good king never will, and an English king never can, desire or exercise so ungracious a power: because in England a king can do no wrong. No pretence of benefit or advantage to the society, by the *example* or otherwise, will justify the addition of the slightest circumstance of affliction, infamy, or suffering to the punishment of an offender; nor shall an individual suffer

public justice are effectually answered if the offender suffereth death, the *ultimum supplicium*, without any

suffer one pang beyond the strict letter of the law, for the pretended benefit of the universe.

Such pretence of *example* would carry us a great way indeed. The law alone will judge of the necessity of example, for which purpose only all punishments are ordained: nor has she ever delegated that discretion to another. And therefore when it was deemed expedient to *aggravate* the punishment of murder, the aggravation, though merely ideal, became law, and an act of parliament was passed to cause all future murderers to be executed within a limited time, and to be dissected afterwards.

The immortal Coke, and the great chief-justice Hale, were so provident and jealous in this point, that they held it murder in a Sheriff if, even by the King's command and authority, he beheaded any criminal who had been sentenced to be burned, or to be hanged. And yet they could not but consider such an alteration of the sentence as a mitigation. But who shall be left to judge of that? not the King, nor his ministers. The wise judges I have mentioned, were afraid to trust such a power in any hands; because they knew not what that discretion might lead to, and what cruelties might not be practised even under the pretence of mercy and mitigation. Therefore they wisely yielded to the prerogative a remission of any part or parts of a sentence; but any sort of *alteration*, though under the fairest pretences, they totally disallowed: and this notwithstanding many precedents to the contrary; adhering strictly to that only safe, because certain rule — *judicandum est legibus, non exemplis*. The learned and just judge Foster, who, (for what reasons I know not) was never displeased to contradict Lord Coke, is of a contrary opinion in this particular. He is willing to allow to the prerogative an alteration of the sentence from burning, hanging, &c. to beheading; purely for the sake of *mercy*: for he is very careful at the same time to declare that the prerogative is bounded on the other side; that it cannot aggravate the punishment; that it cannot go beyond the letter of the law in point of rigour; and he seems to pay much regard to the desire and prayer of the party or his friends. For my own part, I confess myself strongly attached to the decision of Coke and Hale, for the reasons already given: and I believe that every man who can abstract himself from particular cases and individuals, and consider only the general consequences of general maxims, will likewise abide by their opinion. Admit
the

circumstances of infamy or rigour which the judgment doth not import. The king undoubtedly can

the power of *alteration* in the crown, either for the sake of *example* or of *mitigation*, and I will shew you, by one instance amongst many, how the same dreadful consequence may flow from either pretence : especially as the way is now laid open to it by the late sentence of the Recorder pronounced on the eleventh of last December, which you will find at the end of these letters.

" The time and place of execution being no part of the judgment ; and the Recorder's warrant a lawful authority to the Sheriffs," * a convict, under pretence of *example*, may be taken from the bar and executed instantly in the prison. He may likewise, under pretence of *mitigation*, be executed at any time in his cell ; either, as it may be said, to cover the disgrace of the criminal's family, or to save himself the shame of being made a public spectacle. And in either case you have the Sheriffs justified for private execution by the Recorder's warrant ; and the Recorder by the King's sign manual. Our history informs us that by a stretch of prerogative, a convict once suffered PRIVATELY in the prison a death unknown to the laws : he was drowned in a butt of wine. This act was not rendered less illegal by the acquiescence and choice of the criminal. The law of execution differs from that of inheritance. The crown and the convict cannot join together to alter the sentence, as the possessor and next heir may to cut off the entail of an estate.

In the case of Lord Stafford, when the Sheriffs of London and Middlesex laid their doubts before the House of Commons, relative to the alteration of the sentence, the point of law was not even considered. The Sheriffs were in short directed to acquiesce and behead him. And the reason is plain, and acknowledged by the speaker ; because the Commons were in a hurry : they were sure that by the debate the execution would be delayed, they were fearful it might be avoided : and they were determined at all events, that Lord Stafford should not escape in the question. However this we may clearly discover from the Sheriff's doubts, as well as from the opinions of Coke and Hale, and the reasoning of Foster, that the power of alteration in the crown, even in the article of beheading, has never been established by such uncontroverted usage as makes law.

* See the opinion of the judges, page 31.

wholly pardon the offender, or he can mitigate his punishment with regard to the pain or infamy of it: the mercy of the crown is not bounded; but it cannot go beyond the letter of the law in point of rigour: for the law proceedeth in both cases with a perfect uniformity of sentiment and motive. The same benignity of the law which hath left the prerogative free and unconfined in one case, hath set bounds to it in the other. Now, my lord, it will not be said that the present alteration is, or is intended as a mitigation of the judgment pronounced. To force, in a manner, the wives and children of the unhappy sufferers, to be spectators of the infamous death of their husbands and fathers, by executing them as near as conveniently may be to their own houses, cannot be intended, nor will it be esteemed a matter of royal grace*; nor is it granted at the prayer of the parties or their friends.

* It may be said that the aggravation here objected to is merely ideal, and not any real corporal suffering. The distinction is not worth debating.—To walk about Westminster Hall and other places, with disgraceful papers on their heads declaring their offences, was formerly one of the punishments inflicted upon libellers: will any man pretend that the crown can by its prerogative add this slight aggravation where it is not a part of the sentence; because it is merely an ideal, and not a corporal suffering? Can the crown for the same reason command a felon to be drawn upon a sledge; or to be mounted on an ass, and so led through the streets?—No.—To make it unlawful, it is sufficient that it be something which the offender would not willingly undergo, and which the law has not expressly commanded him to suffer. The execution of Mr. Alderman Cornish, on the 23d of October, 1685, opposite King-street, in Cheapside, will serve at the same time to shew us how ill-qualified Kings generally are to select proper objects for examples of severity, and that the alteration in dispute has always been considered as an *aggravation* of the punishment: for historians tell us “that this particular severity towards Mr. Cornish justly gave occasion to much indignation.”

Custom

Custom may sometimes give a sanction to a practice founded in humanity, and not repugnant to any law of substantial justice. But we do not suppose that either immemorial usage or custom can be urged in behalf of this alteration; or, if they could, that they would make it justifiable; because it would not be a practice founded in mercy; and undoubtedly where that is not the case (perhaps even where it is) *judicandum est legibus non exemplis*.

3. Our doubts, my lord, are still farther increased, and become more important when we consider the consequences to which an admission of this power would lead us. If the crown can in one instance, contrary to the sentence, appoint a different place of execution, it may in all: if it can change the usual place of execution to *Bethnal-Green*, it may to Newgate-street; or even to Newgate itself: and thus our boasted usage of public execution (not less necessary to the satisfaction and security of the subject than public trial) may make way for private execution, and for all those dreadful consequences with which private executions are attended in every country where they have been introduced*.

* Where TRIALS are not public; the innocent may more easily be punished, and the guilty go free: the judge may be unjust with less shame and more safety.

The new trial of REVISION, by which Basse and Mac Quirk were acquitted, was private: and the proceedings of that court, with the sentiments of its several members, have never yet been divulged.

Where EXECUTIONS are not public, the convict may suffer secret cruelty and torture, and die a death which the laws have not appointed; whilst the minister without infamy may withdraw from punishment the hired ruffian whom he dares not pardon.

4. Had this power of alteration been in the crown (which we humbly conceive not to be the case) yet we imagine that his Majesty's pleasure has not been properly notified to us, and that the Recorder's authority alone would not be sufficient to justify us for acting in consequence of it, and for departing from the sentence pronounced by the court.

This kind of jealousy is neither new nor extravagant: to it we owe that wise provision which our laws have made, whereby the Coroner is directed to sit on every body that shall die in prison. From Fleta we learn what may be, by what has been actually practised.—*Diligenter est inquirendum si aggravatio pœnæ sicut detentio ubi suspensio corporis per pedes, scissura unguium, onus ferri et hujusmodi tormenta sint causa evasionis. Custodes gaolarum pœnam sibi commissis non augeant, nec pri-sones quicquam judicium excedendo torqueant vel redimant, sed omni favitiâ remotâ, pietateque adhibitâ, judicia in ipsos promulgata debitè exequantur. Vero cum decesserint, antequam per coronatorem videantur et de morte talium diligenter inquiratur, non debent sepeliri: contingit enim quandoque hujusmodi imprisonatos per pœnam injustam mori.*

* The Recorder's warrant as an authority for execution is utterly unknown to the law; nor is any mention made of it in any law-book on any occasion. Hale says, "The use heretofore was, and regularly should be so still, that if sentence of death be given by the Lord High Steward, a warrant under the seal of the Lord Steward, and in his name should issue for the execution; and the like by *three at least* of the commissioners of oyer and terminer where sentence of death is given by them." Co. P. C. p. 31. "But use hath obtained otherwise before commissioners of goal-delivery: for there is no warrant under the seal of the justices for execution; but only a brief abstract or calendar left with the Sheriff or Gaoler: and I remember Mr. Justice Rolle would never subscribe a calendar, but after judgment given would command the Sheriff in court to do execution; and for not doing it he fined Varney the Sheriff of Warwickshire 2000l." Hale P. C. p. 501.

On the circuits it is the custom for the Sheriffs to give two Sundays between the sentence of death and its execution: and if within that time the judge does not reprieve, nor the crown pardon,

For these reasons, and for those contained in the opinion, which, since your lordship requests it, accompanies this, we humbly pray his Majesty either to suffer the sentence of the court to be executed at the *usual* place of execution, or to permit us to have the sanction of the Judges opinion on a matter of so great importance to ourselves, and as we conceive, to the whole nation.

We are, my Lord,

Your Lordship's most obedient servants,

Nov. 15, 1769.

JAMES TOWNSEND.
JOHN SAWBRIDGE.

Inclosed Case, and Mr. Serjeant Glynn's Opinion,

C A S E.

A Man convicted for felony without benefit of clergy, receives sentence in court in the words fol-

pardon, the Sheriff "*pursues the sentence of the court.*" In London and Middlesex, where the King is resident, it is usual not to proceed to execution, but to wait for the declaration of the King's pleasure, as to the exertion of his prerogative to reprieve or pardon; which pleasure is signified by the Recorder. viz. either that his Majesty has been graciously pleased to reprieve or pardon the convict: or that it is his pleasure to forbear such interposition, and that *the law shall take its course.* So far and no farther is the Recorder's warrant a lawful authority. The royal prerogative of mercy is a dam interposed between the sentence and the convict; and when that is removed by the signification of the King's pleasure by the Recorder, the judgment instantly rushes in like a flood, and by its own force and power bears off the criminal to execution.

lowing,

lowing, viz. " That you be taken hence to the
 " place from whence you came, and from thence
 " to the USUAL place of execution, where you are
 " to be hanged by the neck until you are dead."

For the execution of this same man, the following is sent by the Recorder :

London } To the Sheriffs of the city of London,
 and } and to the Sheriff of the county of
 Middlesex. } Middlesex, and to the Keeper of
 his Majesty's gaol of Newgate.

WHEREAS at the session of gaol delivery of Newgate for the city of London and county of Middlesex, holden at Justice-Hall in the Old-Bailey on the of last, A. B. received sentence of death for his offence in the indictment against him mentioned : And whereas it hath been duly signified to me that it is his Majesty's pleasure that the said sentence be executed in the most convenient place near Bethnal-Green Church, in the county of Middlesex. Now it is hereby ordered, that execution of the said sentence be made and done upon him the said A. B. on the day of this instant month of at the most convenient Place near Bethnal-Green church, in the said county of Middlesex.

Given under my hand and seal this day
 of 1769.

JAMES EYRE, Recorder.

Your

Your opinion is desired, whether a Sheriff will by law be justified in executing such warrant of the Recorder?

Mr. Serjeant Glynn's opinion.

I Confess a very great difficulty in answering this question *. If the place is a *material* part of the sentence, the omission of which would vitiate the judgment, the execution must be conformable to it, and I know no authority that can justify a deviation from it. The King may pardon all or part of the sentence, but cannot alter it; the Sheriff's authority is the sentence, he is bound to look to it, and see it rightly executed. If the place is *not material*, then I should conceive it to be in the Sheriff's discretion, he being responsible for the fitness and propriety of the place. I know not how to account for the many instances of execution in places different from the judgment by command of the Judges upon the circuit, or his Majesty in London and Middlesex, than as recommendations to the Sheriffs and intended indemnities to them against

* Sir Fletcher Norton finds no difficulty at all in this case. He says, that after judgment the body is the King's, and he may do what he pleases with it.

Mr. Recorder of London finds as little difficulty. He has said a hundred times, that he does not see why the criminals should not be hanged upon the leads in the Old-Bailey; and that if he saw any probability of disturbance without doors, he would execute them within.

The old lawyers (amongst whom may justly be reckoned Mr. Serjeant Glynn) differ from these worthy moderns. Coke, in his institutes, says, "Albeit judgment be given against a man in case of treason or felony, yet his body is not forfeited to the King; but until execution remains his own." And Mr. Justice Foster,

the consequences of departing from ancient usage. There are certain cases in which the Sheriffs must disobey such commands, viz. If the crown commanded an execution in a private room or a church, &c. Though I am not determined in my judgment with respect to the *materiality* of the place in the sentence, I have no doubt of the conclusion that must follow from either proposition: If it is *material*, no power can change it; if it is *not material*, the Sheriff is intrusted with the execution of the sentence, and must have it in his power to judge of the place *. I should advise the Sheriffs to represent to his Majesty the doubts conceived by them; the more so as I cannot but doubt of the propriety of signifying his Majesty's pleasure through the Recorder, being much inclined to think that the Sheriffs cannot in any case be justified but by the commands of the King or the court directed to them.

Nov. 13, 1769.

JOHN GLYNN.

Foster, in the case of Macdonald, where Mr Attorney-General advanced "that a person under an attainder is *civilitur mortuus*, his person and estate are absolutely at the disposal of the crown," says that, "the person of a man, even under an attainder, is not absolutely at the disposal of the crown. It is so, for the ends of public justice, and for no other purpose. The King may order execution to be done upon him according to law." And Mr. Glynn is clear, that "there are certainly cases in which the Sheriffs must disobey, viz. If the crown commanded an execution in a *private* room, or in a church," &c.

* According to Coke, "the judgment doth belong to the judge, and he cannot alter it; the execution belongs to the Sheriff, and he cannot alter it." The Sheriffs formerly used to execute a person attainted of treason, whenever and wherever they found him, being charged solely with the execution, and responsible only for the identity of the person attainted.

Respite

Respite for a Fortnight.

To the Recorder, &c.

Sir,

St. James's, Nov. 20, 1769.

I Am commanded to signify to you his Majesty's pleasure that when the reprieve which his Majesty was graciously pleased to grant on the 14th instant to John Doyle and John Valline, two persons under sentence of death in Newgate (which was for one week from the time that had been appointed for their execution) shall expire, the execution of the said sentence of death so passed upon them, be farther respited for a fortnight.

I am, Sir,

Your most obedient humble servant,

WEYMOUTH.

To James Eyre, Esq; Recorder of the city of London; the Sheriffs of the said city and county of Middlesex; and to the Keeper of the gaol of Newgate, and all others whom it may concern.

On Thursday, November 23, the Sheriffs received the following letter from the Right Honourable the Lord Chancellor :

D

Gentlemen,

Gentlemen;

I Have the honour to send you herewith inclosed a copy of the case and question referred, by his Majesty's command, to the twelve judges, and hope the case is so stated as to bring the point upon which your doubts have been conceived, fully and completely before their lordships. I have this day laid the case before my lords the judges, who will return their answer as soon as they have considered and formed their opinion upon the same *.

I have the honour to be,

With the greatest respect,

Gentlemen,

Your most obedient faithful servant,

Nov. 23, 1769,
Lincoln's-Inn-Fields.

CAMDEN.

Inclosed case referred to the Judges.

JOHN Doyle and John Valline were convicted at the last session of gaol delivery for the county of Middlesex, at the Old-Bailey, of felony without benefit of the clergy, and received sentence of death.

The sentence pronounced in court by the Recorder of London was as follows; "That you, the se-

* The case was so extremely clear to my lords the judges, that their lordships took very little time indeed,—I cannot exactly say how many minutes,—to consider—to form their opinion—and to give their answer.

“veral prisoners at the bar, be taken hence to the
 “place from whence you came, and from thence
 “to the *usual place* of execution, where you are to
 “be severally hanged by the neck till you are dead,
 “and may God Almighty be merciful to your
 “souls.”

His Majesty was afterwards pleased to signify his pleasure to the Recorder, by his SIGN MANUAL, that he should by his warrant direct the prisoners to be executed in the most convenient place near Bethnal-Green Church, in the county of Middlesex, whereupon the Recorder of London issued his warrant in the following words:

London	}	To the Sheriffs of the city of London,
and		and to the Sheriff of the county of
Middlesex.		Middlesex, and to the Keeper of his Majesty's gaol of Newgate.

W Hereas at the session of the general gaol delivery of Newgate, for the city of London and county of Middlesex, holden at Justice-Hall in the Old-Bailey, on Wednesday the 18th day of October last, John Doyle and John Valline received sentence of death for their offence in the indictment against them mentioned: And whereas it hath been duly signified to me that it is his Majesty's pleasure that the said sentence be executed in the most convenient place near Bethnal-Green Church, in the county of Middlesex: Now it is hereby ordered, that the execution of the said sentence be made and done upon them the said John Doyle and John Valline on Wednesday, the 15th day of this instant month of November, at the most convenient place near

Bethnal-Green Church, in the said county of Middlesex.

Given under my hand and seal this 9th day of November, 1769.

JAMES EYRE, Recorder.

The Sheriffs of London have entertained a doubt whether it is lawful for them to execute the said convicts, according to the tenor of the above warrant, at the most convenient place near Bethnal-Green Church, in the county of Middlesex.

Therefore the question is, Whether it is lawful for them to execute the said convicts, according to the tenor of the above warrant, at the most convenient place near Bethnal-Green Church, in the county of Middlesex?

The Sheriff's letter to the Lord Chancellor.

My Lord,

Nov. 24, 1769.

WE return your Lordship many thanks for your letter, and for the copy of a case which accompanied it.

We are sorry to say that the case is not so stated as to bring the points upon which our doubts are conceived fully and compleatly before the judges. My Lord, it is so far from being *full* and *compleat*, that it is not the *same* case. It differs essentially, as we conceive, from the case which we delivered to
Lord

Lord Weymouth to be laid before his Majesty; and on which his Lordship taught us to expect such farther directions as might SATISFY our doubts.

It is not the same case:—For the copy inclosed by your Lordship states his Majesty's pleasure signified by a sign manual. [Note, This sign manual is not given, as the sentence and the Recorder's warrant are, for the judges' consideration.*]

His Majesty's pleasure, my Lord, signified by a sign manual, makes no part of our case. To us there is no such sign manual. *De non apparentibus et non existentibus eadem est ratio*. This difference is material: for on it is founded our fourth objection in the case, as stated by us.

It is not full and compleat:—For the copy inclosed by your Lordship concludes that the question is, whether it is *lawful* for the Sheriffs to execute the said convicts, according to the tenor of the Recorder's warrant, at the most convenient place near Bethnal-Green Church, in the county of Middlesex. The question in our case is not only whether it is *lawful*; but also whether it is *necessary*: not only whether the Sheriffs *lawfully may*; but whether *by law they must* execute according to the tenor of the Recorder's warrant.

The case, of which your Lordship has favoured us with a copy, consists of four parts;

The sentence of the court.

The Recorder's warrant.

A stating of a sign manual,—*which is not our case*.

A conclusion,—*which is not our question*.

* Very many reasons will suggest themselves to the reader to make him wish for a sight of such a sign manual, with which no law book can furnish him. He will be curious to know its FORM, the MATTER it contained, by whom it was COUNTERSIGNED, &c. &c.

The case and question therefore referred by his Majesty's command to the twelve judges is neither our case nor our question.

* A naked opinion of the judges on the case referred to them will not SATISFY our doubts as to that due execution of our office, to which we are bound by law and oath. For by stating, as part of the case, the sign manual (of which we know nothing) the judges perhaps may not confine their consideration to the validity of the Recorder's warrant, which yet is the only one we have for execution, except the sentence of the court, with which it militates: and by concluding that the question is whether it is *lawful* for the Sheriffs to execute the convicts according to the tenor of the Recorder's warrant, *our* questions may chance to receive no answer: for should their lordships the judges be of opinion that these words—the *usual* place of execution—are not a *material* part of the sentence; and should they, observing the discretion which is still left to the Sheriff even in the Recorder's warrant; and that if the discretion is in the crown, and not in the sheriffs, it cannot be delegated by the crown to the Sheriffs: should the judges upon this or any other account be farther of opinion that the place is left to the discretion of the Sheriff, making himself responsible for the fitness of the place; their lord-

* When a returning officer is fearful of getting into a scrape, and is desirous of being safe, he is advised to make a simple return without reason or circumstance. The judges in Sir Edward Coke's case would have acted wisely had they followed the same method, and given a *naked* opinion, without ground or principle: for they would then have avoided the everlasting reproach of having laid it down as a maxim that "an oath may be well enjoined by the King and order of state, without parliament." When the reasons for an opinion are unknown, its illegality cannot be so easily detected.

ships

ships might then very well answer the question referred to them in the affirmative: and might thereby seem to vest the discretion in the crown, whilst the very reason of their answer would be that they judged it to be in the Sheriffs.

For these and many other reasons, my Lord, we wish humbly to intreat his Majesty that the same method may be followed with us as was practised in Sir Edward Coke's case; who, after having been chief-justice, was appointed Sheriff of the county of Buckingham, and taking four exceptions to the oath proposed to him, both his exceptions and his reasons were by the lord keeper laid before all the judges, and received each a separate answer with *their* reasons*.

In the same manner we pray that this letter and *our* objections, as we delivered them to the secretary of state, may be laid before the judges; that so *our* case and our questions may receive an answer, since it is intended to satisfy *our* doubts.

We are, my Lord,

With the greatest respect,

Your lordship's most obedient,

And faithful humble servants,

JAMES TOWNSEND.

JOHN SAWBRIDGE.

* See Cro. Car. Fol. 25.

Letter from the Lord Chancellor to the Sheriffs.

Gentlemen,

I Received your letter at Westminster this morning, and have transmitted it to Lord Weymouth, and am inclined to believe, that when you have seen the Judges opinion that was sent to me last night, and which I have desired Lord Weymouth to send you a copy of, you will be satisfied that the Recorder's warrant is a lawful authority for you to see execution done according to the tenor of the warrant.

If the warrant is a lawful authority, I conceive that you will be under a necessity to obey it. I will only add, that your reasons and petition, together with Serjeant Glynn's opinion, were transmitted by me to Lord Mansfield, and I dare say have been perused by the Judges, though they make no part of the case.

After you have perused the Judges opinion, I should be obliged to you if you would state your own case with your question, which will be taken into consideration; if you remain dissatisfied, and it should appear that any material fact has been stated that ought to be omitted, or any thing omitted that ought to have been stated, or if the question has been defectively or improperly drawn.

I have the honour to be,

With the greatest respect,

Your most obedient faithful servant,

Westminster-Hall,
Nov. 25, 1769.

CAMDEN.

On

On Friday the first of December the Sheriffs received the following letter from Lord Weymouth,

St. James's, November 30, 1769.

Gentlemen,

HIS Majesty having thought proper to take the Judges opinion upon the difficulties you were under with regard to the execution of Doyle and Valline, in order to satisfy your doubts upon that head, I am commanded to acquaint you, that the Judges are of opinion, " that the time and place of execution are in law NO PART of the judgment, and that the Recorder's warrant was a lawful authority to the Sheriffs as to the time and place of execution*."

I am, Gentlemen,

Your most obedient humble servant,

WEYMOUTH.

Sheriffs of London and Middlesex.

* The common law of England is founded on reason, nature, and the law of God, as declared in the scriptures; accordingly these last are for ever quoted as authorities by all ancient and approved writers on the common law. See *Bracton*, *Coke*, &c. *passim*.

In holy writ we find that all executions were commanded to be done without the camp before the Israelites were settled, and without the town afterwards. See Exodus xxi, 14. Leviticus xxiv, 23. Deuteronomy xvi, 18—xvii, 5—xxi, 19—xxii, 24. Numbers v, 2—vi, 9, 11—xv, 35, 36—xix, 1—xxxii, 19. 1 Kings ii, 28—xxi, 13. Matthew xxvii, 31, 32, 33. Mark xv, 20. Luke iv, 29—xxiii, 26. John xix, 17. Acts vii, 58. Hebrews xiii, 11, 12. The learned commentators

Letter from Lord Weymouth to the Recorder.

Sir,

St. James's, Nov. 30. 1769.

THE Sheriff having expressed doubts with regard to the execution of Doyle and Valline, it was thought proper to take the Judges opinion on that

on these and other passages will furnish abundant matter to the curious, who have leisure for the search. Amongst others Le Clerc supposes that "one political reason of this law might be to hinder the people from being hardened into cruelty or insensibility by frequently viewing the death and dead bodies of men."

The same has been the rational practice of all other nations.

The places of execution in England were likewise all of them without the towns: and so strictly is this practice adhered to by our law, that to conform thereto, it has in some instances been forced to depart from some other established maxims. London, York, Exeter, &c. are counties: they have sheriffs and other officers of their own. Upon what other principle than the above, can we account for their executing criminals without their several respective jurisdictions; which notwithstanding is the constant usage. Though the sheriffs, constables, &c. of London are bound to go out of their own county and to execute their own convicts at Tyburn, is it pretended that the Crown or the Recorder can send them any where else; to the extremities of the county of Middlesex, or of any other county? May the Sheriffs of York, Exeter, &c. be likewise sent to the extremities of Yorkshire, Devonshire, &c. May the Sheriff of Cornwall be sent thirty leagues by sea to execute in the Scilly Islands, which are within the county, for the benefit of the example to their inhabitants? And yet, all these and many more consequences must follow from the Judge's opinion, if it were law. May the Crown and the Recorder at their pleasure bring a nuisance to my door or my estate, and trespass on my lands by virtue of a sign manual or a warrant? The Recorder thinks he may, and did actually direct the Sheriffs to commit such a trespass on the 26th of July 1768, for his warrant of July 21, 1768, runs thus. "It is hereby ordered that execution of the said sentence be made and done upon them

" the

matter, which I send you herewith ; and I am to acquaint you, that, having laid the same before the King, It is his Majesty's pleasure, that there shall be no further respite for those convicts.

I am, Sir,

Your most obedient humble servant;

WEYMOUTH.

“ the said John Granger, Daniel Clark, Richard Cornwall, Patrick Lynch, Thomas Murray, Peter Flaharty, Nicholas McCabe, on Tuesday the 26th of this instant month of July, “ *at and in the open fields*, situate on the north side of the public highway leading from Rag-Fair to Sun-Tavern-Fields, in the parish of St. George in the east, in the county of Middlesex.”

In some places by the extension of the neighbourhood, houses have surrounded the old place of execution. In that case, though it may be very proper for the legislature to interfere, yet the inhabitants cannot justly complain: for the nuisance was not brought to them; nor is the inconvenience so great at the usual place of execution, since no accident can be supposed to happen by surprize to pregnant or weak women, &c.

Not many months since the inhabitants of the neighbourhood of Tyburn, applied formally by counsel to the Judges at the Old Bailey, that another place of execution more remote might be appointed: Lord Chesterfield (not knowing that the Recorder could do it without him,) consented to the appointment of any other convenient place in his manor. The Judges listened with that attention which the difficulty of the case required. They did not think the place of execution either discretionary or immaterial, but a part of the sentence. They thought it a weighty matter, which deserved much consideration. They refused to do any thing in it themselves; and not dreaming of the King's sign manual, or the Recorder's warrant, advised an application to Parliament.

Note, This application to the Judges was not made by the Secretary of State.

Letter from the Sheriffs to the Lord Chancellor.

My Lord,

WE did not receive from Lord Weymouth any account of the Judges opinion, given on Friday, Nov. the 24th, 'till last Friday the 1st of Dec.—We thought it not right to trouble your Lordship with a reply whilst we were in daily expectation of that opinion.—And we waited with the greater impatience lest your Lordship, not imagining that such a delay could have happened, should suppose us either backward to acknowledge our satisfaction; or negligent to avail ourselves of your Lordship's very kind and candid offer of farther consideration if we remained dissatisfied.—We cannot but lament, my Lord, that by the inclosed letter from Lord Weymouth our doubts are OVERRULED without being SATISFIED.—We can account for it no otherwise than by supposing, IF *the Judges saw our objections and our questions*, that they deemed them too trivial to deserve an answer.—Whilst we submit intirely to the Judges opinion, as conveyed to us by Lord Weymouth, we are unhappy to be sent to execution without the least information where this discretion is lodged, or by whom it is exercised.—We have received, as in our last letter we apprehended, a naked opinion from the Judges “that the place of execution is in law no part of the judgment, and that the Recorder's warrant is a lawful authority to the Sheriffs as to the place of execution.”

If we have had our doubts, and have been mistaken in our opinion, we hope, your Lordship will excuse us when you consider, that even the Recorder,

order, so conversant in these matters, and whose warrant is for the future to be our authority, was himself uncertain: for when he directed us in court to the *USUAL* place of execution, he must either have supposed it a part of the sentence, or that he was exercising a discretion in that particular vested in himself.—His subsequent warrant contradicted both these suppositions.

Supposing the place to be no part of the sentence, how could we avoid being startled when we saw ?

First, A discretion exercised by the Recorder, directing us to the *USUAL* place of execution.

Secondly. A discretion exercised by the crown, setting aside the Recorder's discretion.

Thirdly, This discretion of the crown not signified to us by writ or sign manual, but by warrant from the Recorder, whose discretion it overruled.—And

Lastly, A discretion left to ourselves to execute, not *IN*, but as *NEAR* to a *church** as we should judge convenient.

We need not repeat to your Lordship many other reasons as well as those we have before given to justify our conduct.—The Judges have determined, and we do not presume to hesitate on their decision.—What is now said is not meant to cause any farther trouble, but only as an apology for

* Had the Sheriffs judged it convenient they might by the warrant have executed the criminals in the church porch, or in the church-yard. We have often heard of churches as places of refuge; but this is surely the first time in any nation that ever a *CHURCH* was chosen as a land mark for a criminal execution.

that which we have already occasioned to your Lordship.

We are my Lord,

With the greatest esteem and respect;

Your Lordship's most obedient, and

faithful humble servants,

Dec. 2, 1769.

JAMES TOWNSEND.
JOHN SAWBRIDGE.

Letter from the Sheriffs to Lord Weymouth.

My Lord,

London, Dec. 2.

THE opinion of the judges, as conveyed to us by your lordship, has over-ruled our doubts, and we must request your lordship to present to his Majesty our most humble thanks for his Majesty's royal condescension, in directing our case to be laid before the judges.

We are, my Lord,

Your Lordship's

Most obedient humble servants,

JAMES TOWNSEND.
JOHN SAWBRIDGE.

We

We shall be obliged to your lordship if you will direct Mr. Serjeant Glynn's opinion to be returned to us.

Letter from Lord Weymouth to the Sheriffs,

Gentlemen, St. James's Dec. 4, 1769.

I Am glad to find that the opinion of the judges has over-ruled your doubts*.—I shall not fail to lay before the King your thanks for his Majesty's goodness upon this occasion.—As Mr. Serjeant Glynn's opinion was transmitted to me by you as one of the reasons which induced you to doubt of the legality of the Recorder's directions, and was, by me, laid before his Majesty, *the original must remain in my office*, but I send you the inclosed copy.

I am, Gentlemen,

Your most humble servant,

WEYMOUTH.

Sheriff of Middlesex.

* Lord Weymouth is glad that the Sheriffs' doubts have been OVER-RULED. The Sheriffs would have been glad if, according to promise, their doubts had been SATISFIED.

John

John Doyle, and John Valline, were executed at Bethnal-Green, on Wednesday Dec. 6, 1769*.

* It has long been evident from every domestic measure of administration, that there is a settled plan, a wicked conspiracy to expose and set aside the civil power of this country. The present is one flagrant instance.

It is pretended that the civil power is too weak to keep the peace in the neighbourhood of Spitalfields: a barrack has been therefore built, and soldiers have regularly mounted guard there for a long time past; they have likewise been employed as constables to apprehend offenders, for which purpose, and not to quell a riot, they were first sent thither.

After every method had been used still more to exasperate and incense those unhappy people, the civil power is ordered; out of the common course, into that very neighbourhood to execute the criminals it could not apprehend.

The Sheriffs saw plainly the snare and the wickedness of those who laid it for them; but being as solicitous to preserve as the others to destroy the authority of the civil power, they were determined to support it at the hazard, and, if necessary, at the expence of their lives. Without the assistance of the military the Sheriffs executed those whom Lord Barrington's WORTHY magistrates could not apprehend. And they performed this without the murder of any women or children; though they too had Lord Weymouth's warrant for a general and promiscuous carnage: for they were trifled with and insulted (much more than the justices in St. George's-Fields) by some few desperate persons who perhaps were employed for that very purpose.

It should here be considered that the Sheriffs, and not the Recorder, are by our laws answerable for the execution. Has the wisdom of our laws then given to the Recorder, who is not answerable, the power of appointing a place of execution to the Sheriffs, who are answerable? Certainly! If the decision of the judges on this point is law. Let us see the immediate consequence. The Recorder appoints that place of all others where the Sheriffs could least of all answer for the execution; and where, had he himself been Sheriff, (he who had before declared that if he saw any probability of disturbance without doors he would execute the criminals within) he would least have chosen to go to. If this arrangement is the wisdom of the law, it differs widely from every thing else that is called by that name.

The next sentence which Mr. Recorder of London passed was on Monday the eleventh of December, when he pronounced the following words ONLY.

“ You the several prisoners at the bar shall be
 “ severally hanged by the neck till you are dead,
 “ and may God Almighty be merciful to your
 “ soul *.”

* The Recorder justified himself for his FIRST sentence, by declaring that it was the constant manner of passing sentence time out of mind, and that in it he had followed an uninterrupted course of precedents. We admit his justification, and believe he was right. Yet we instantly find Mr. Recorder very ready to reconcile the alteration to his sentence, by telling the Sheriffs, that though in court he had said “ USUAL place of execution,” they were to pay no regard, or as little as himself, to what he had said in court; but were to be guided by his warrant, as he was by the sign manual. Again after having reconciled the prerogative to his sentence, we find him as ready to reconcile his sentence to the prerogative: for in spite of what he had declared to justify his FIRST sentence, of the *constant usage time out of mind, and un-interrupted course of precedents*; the very next time of passing sentence, that he might give the prerogative full swing, he varied from this constant usage, and un-interrupted course of precedents, and introduced a new form, WARRANTED BY NO PRECEDENT. I say, warranted by no precedent: I appeal to all the present judges, whether any of them ever passed sentence in this manner. We are not to be amused by the *careless* entries of — *Suf. per Col. — Suspendatur quo usque, &c.* — They are not precedents or rules for judgment. In the trials of peers, or for high treason, the importance of the matter or the rank of the convicts, cause more care to be taken in the entry of the judgments, and they are accordingly all entered in a very different manner, with all the minute particulars. It may perhaps be worth remarking, that the judgment passed on Doyle and Valline, was not entered till after their execution; nor would it have been entered at all, if the omission had not been accidentally discovered the next sessions by one of the same nature.

If Mr. Recorder's first mode of passing sentence was right, as he insisted, his second must be wrong, and *vice versa*; Mr. Recorder may chuse.

In this new mode of passing sentence, Mr. Recorder not only omits to mention any place of execution; but also leaves out "the being taken to prison, and from thence to the place of execution." This last sentence ought to have been executed instantly in court. No sentence can be future; but must always take place the moment it is pronounced. The imprisonment after sentence is therefore made part of the punishment; it is no longer *in custodiam*, but *in penam*. I will be bold to say, that the "being taken to the prison, and from thence to the place of execution," is a *material* part of the sentence, the omission of which must vitiate the judgment: for if there is not an absolute continuity; if there is the least interruption in a sentence, it is void; nor do we know by what power or authority the convicts were prisoners after sentence, or were taken back to the gaol, or from thence to the place of execution.

That the "being taken," is a material part of the sentence, appears likewise from hence, that even the particular manner of being taken, by way of ignominious aggravation, is appointed by law a *material* part of the punishment for treason. And yet if the "being taken," is likewise no part of the sentence for felony, it will follow from the judges opinion about the *place*, that the crown can for common felony, direct the criminal to be carried on a sledge, hurdle, &c. as in cases of treason: for that might likewise serve as an *example*, and the aggravation would be merely *ideal*, and not corporal suffering.

From amongst many others of the same sort I will only propose to Mr. Recorder's consideration the following sentence passed by the lord high-steward on the 18th of April, 1760.

"NOTHING remains for me, BUT to pronounce THE dreadful SENTENCE OF THE LAW; and THE JUDGMENT OF THE LAW is, and this high court doth award,

"That you Laurence Earl Ferrers *return to the prison of the Tower, from whence you came; from thence you must be led to the place of execution*, on Monday next, being the 21st day of this instant April, and when you come there you must be hanged by the neck till you are dead, and your body must be dissected and anatomised."

If, as he declared, the lord high-steward did in these words *pronounce nothing but the sentence of the law*, and if *the judgment of the law* is as above by him pronounced, I may then safely venture to assert that on the 11th of last December Mr. Recorder did pronounce *less* than the sentence of the law, and that the judgment of the law is *not* as by him pronounced.

P I N I S.



